



STATE OF NEW YORK

**UNEMPLOYMENT INSURANCE APPEAL BOARD**

PO Box 15126

Albany NY 12212-5126

**DECISION OF THE BOARD**

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Mailed and Filed: NOVEMBER 28, 2022

IN THE MATTER OF:

Appeal Board No. 624951

PRESENT: MICHAEL T. GREASON, MEMBER

The Department of Labor issued the initial determination, disqualifying the claimant from receiving benefits, effective June 22, 2021, on the basis that the claimant voluntarily separated from employment without good cause. The claimant requested a hearing.

The Administrative Law Judge held a telephone conference hearing at which all parties were accorded a full opportunity to be heard and at which testimony was taken. There was an appearance by the claimant and on behalf of the employer. By decision filed July 11, 2022 (), the Administrative Law Judge overruled the initial determination.

The employer appealed the Judge's decision to the Appeal Board.

Based on the record and testimony in this case, the Board makes the following

**FINDINGS OF FACT:** The claimant worked as a sales' consultant for the employer, a car dealership, since 1982. The claimant never worked remotely for the employer. The claimant sold his home in New York on or before June 1, 2021. The claimant left for a vacation to Florida on June 1, 2021, and remained in Florida through June 21, 2021.

On June 21, 2021, the claimant flew back to New York. When he came in to work that same day, he notified SD, the executive sales' manager, that he would be returning to Florida that same day because he was retiring. The claimant explained that he would send his remaining customers to a coworker and split the commission and/or obtain a referral fee. The claimant then informed other

coworkers (including multiple sales agents, the used car manager, and the leasing manager) that he was moving to Florida to retire and that he would be completing open sales with the assistance of a coworker. The claimant stopped to talk to the employer's controller, located in another building at the dealership, to state that he was happily retiring to Florida and leaving that day. In response, the employer's controller sent the claimant a letter, on July 2, 2021, to his new address in Florida, confirming his resignation and retirement. The employer paid the claimant through August 27, 2021, for commissions due on outstanding sales. Continuing work was available had the claimant remained in New York.

OPINION: The credible evidence establishes that the claimant resigned from his employment, effective June 21, 2021, to relocate to Florida. Although the claimant argues that the employer, instead, discharged the claimant as of August 27, 2021, after affording the claimant remote employment, the contention is not persuasive. In so concluding, we find that the claimant, a car salesperson, had relocated to Florida, from New York, as of June 21, 2021, and had no intention of resuming his work in New York. There is no evidence, prior to the claimant's abrupt separation, that he spoke with the employer's manager or controller as to the possibility of remote work.

Nor do we find any evidence that the claimant had worked remotely. Significantly, we find that the claimant offers vague, evasive and imprecise testimony as to details of the purported agreement as to his continued employment. The claimant does not testify with any specificity as to the details of the remote arrangement, when the remote arrangement was implemented, how it operated, and with whom he had discussed the arrangement. Instead, we credit the consistent and detailed testimony, from the employer's witnesses regarding the claimant's final day when the claimant advised the employer of his resignation without notice to relocate to Florida. Furthermore, the employer's mere payment of outstanding commissions previously earned does not constitute a continuation of the employment relationship. Accordingly, we conclude that the claimant separated from his employment without good cause and under disqualifying circumstances.

DECISION: The decision of the Administrative Law Judge is reversed.

The initial determination, disqualifying the claimant from receiving benefits, effective June 22, 2021, on the basis that the claimant voluntarily separated from employment without good cause, is sustained.

The claimant is denied benefits with respect to the issues decided herein.

MICHAEL T. GREASON, MEMBER